APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

	CTION 1: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): June 5, 2008
B.	DISTRICT OFFICE, FILE NAME, AND NUMBER: CESWG, SWG-2008-0025; Wetland 1
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Harris City: Houston Center coordinates of site (lat/long in degree decimal format): Lat. 29.9353° N., Long95.4199° W. Universal Transverse Mercator: ZONE 15 - 266420.70E 3314093.93N Name of nearest waterbody: Greens Bayou
	Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: NA Name of watershed or Hydrologic Unit Code (HUC): 12040104 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: 23April2008 Field Determination. Date(s):
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	wre Areno "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the iew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
В.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	ere Are no "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	 Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): 1

***	aters of the C.S.
a.	Indicate presence of waters of U.S. in review area (check all that apply): 1
	TNWs, including territorial seas
	Wetlands adjacent to TNWs
	Relatively permanent waters ² (RPWs) that flow directly or indirectly into TNWs
	Non-RPWs that flow directly or indirectly into TNWs
	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
	Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
	Impoundments of jurisdictional waters
	TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
b.	Identify (estimate) size of waters of the U.S. in the review area:
	Non-wetland waters: linear feet: width (ft) and/or acres.
	Wetlands: acres.
^ I	.imits (boundaries) of jurisdiction based on: Pick List
· ·	dinits (boundaries) of jurisdiction based on. I tex Last

c. Limits (boundaries) of jurisdiction based on: Pick List Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: A review and investigation of documents listed in Section IV of this form was conducted 23April2008. The 1995 and 2004 Infrared aerial photographs indicated cooler signatures which can be indicative of hydrology. Clients submitted data sheets confirmed wetlands containing the three criteria (hydrology, hydric soils, and hydrophytic vegetation) of a wetland as outlined in the 1987 Corps of Engineers Delineation Manual. NWI indicates that this area contains a Palustrine Scrub-shrub Farmed (PSSf) wetland. The wetland and project area are outside of the 100-year

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

Supporting documentation is presented in Section III.F.

floodplain as indicated by the FEMA FIRM map. The nearest aquatic feature is a man-made upland drainage ditch located on the southeast boundary of the wetland and connects to a second upland man-made drainage ditch. The wetland is surrounded by additional upland man-made ditches, none of which have a hydrologic surface connection to any water of the US and are not shown on a Topo map. All of the previously mentioned upland man-made ditches are located less than a 10th of a mile away from the wetland and have no hydrologic surface connection to any water of the United States (U.S.). A single leveed upland man-made drainage ditch, located north of the wetland and previously mentioned man-made drainage ditches, historically connected by a culvert to an upland man-made drainage ditch named P144-03-00. P144-03-00 connects to P100-00-00 (Greens Bayou). Site photos indicate this culvert has since been blocked by a plate of steel. This leveed upland man-made drainage ditch did not and currently does not have a hydrologic surface connection to the wetland. The nearest U.S. water is Greens Bayou located approximately 1.3 linear miles and has no hydrologic surface connection to the wetland. The closest TNW is Lake Houston located approximately 15 aerial miles which has no hydrologic surface connection to the wetland. The wetland is isolated. The wetland is not or could not be used by interstate or foreign travelers for recreation or other purposes, is not or would not be used for industrial purposes by industries in interstate commerce, and is not or could not be used to take fish or shellfish sold in interstate or foreign commerce. No other nexus to interstate or foreign commerce is known.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1.	TNW Identify TNW: .
	Summarize rationale supporting determination:
2.	Wetland adjacent to TNW Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

``	Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches
(ii)	Physical Characteristics: (a) Relationship with TNW: Tributary flows directly into TNW. Tributary flows through Pick List tributaries before entering TNW. Project waters are Pick List river miles from TNW. Project waters are Pick List river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain:
	ldentify flow route to TNW ⁵ : Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

	(b)	Tributary is:	racteristics (check all that apply Natural Artificial (man-made). Explai Manipulated (man-altered). E	n:	in: .		
		Tributary properties of Average width: Average depth: Average side slop	with respect to top of bank (esting feet feet feet feet feet feet)	mate)):		
		Primary tributary subs	trate composition (check all that Sands Gravel Vegetation. Type/%			☐ Concrete ☐ Muck	
		Presence of run/riffle/r Tributary geometry:	ability [e.g., highly eroding, slow bool complexes. Explain: ick List proximate average slope):	ughin · %	g banks].	Explain: .	
	(c)	Flow: Tributary provides for: Estimate average numb Describe flow reg Other information on o	per of flow events in review are time:	a/yea	r: Pick Li		
		Surface flow is: Pick	St. Characteristics: .				
		Subsurface flow: Pick Dye (or other)	List. Explain findings: test performed: .				
		clear, nate changes in shelving vegetation leaf litter	ck all indicators that apply): ural line impressed on the bank in the character of soil in matted down, bent, or absent disturbed or washed away deposition ning		destruction the present sediment scour multiple	nce of litter and debris on of terrestrial vegetation nce of wrack line sorting observed or predicted flow everage in plant community	vents
		Discontinuous	s OHWM. Explain:	•			
		☐ High Tide Li☐ oil or scu:☐ fine shell	m line along shore objects or debris deposits (foreshore) markings/characteristics ges	Mea	n High Wasurvey to a physical m	ater Mark indicated by: available datum;	
(iii)	Cha	emical Characteristics: aracterize tributary (e.g., Explain: ntify specific pollutants,	water color is clear, discolored	l, oily	film; wate	er quality; general watershed	characteristics, etc.)

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv)	Bio	logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	ract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		ysical Characteristics: General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain: .
			Surface flow is: Pick List Characteristics: .
			Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .tify specific pollutants, if known:
	(iii)	Bio	Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: TNWs: linear feet width (ft), Or, acres. Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

		Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
	3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
		Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
	4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
		Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
		Provide acreage estimates for jurisdictional wetlands in the review area: acres.
	5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
		Provide acreage estimates for jurisdictional wetlands in the review area: acres.
	6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
		Provide estimates for jurisdictional wetlands in the review area: acres.
	7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
E.	DE SU D	DLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
	Ide	ntify water body and summarize rationale supporting determination:

 ⁸See Footnote # 3.
 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 10 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

		vide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
F.	×	N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	facto judg	ride acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR ors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional ment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: 2 acres.
	a fin	vide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such ding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	and	PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report.
		Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas: USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000 scale Aldine, TX Quad. USDA Natural Resources Conservation Service Soil Survey. Citation: National wetlands inventory map(s). Cite name: State/Local wetland inventory map(s):
		FEMA/FIRM maps: 48201C0460L. 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date): 1995 & 2004 Infrared Aerial Photos. or Other (Name & Date): Clients site photos dated 28September08, & 17April08. Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: A review and investigation of documents listed in Section IV of this form was conducted 23April2008. The 1995 and 2004 Infrared aerial photographs indicated cooler signatures which can be indicative of hydrology. Clients submitted data sheets confirmed wetlands containing the three criteria (hydrology, hydric soils, and hydrophytic vegetation) of a wetland as outlined in the 1987 Corps of Engineers Delineation Manual. NWI indicates that this area contains a Palustrine Scrub-shrub

Farmed (PSSf) wetland. The wetland and project area are outside of the 100-year floodplain as indicated by the FEMA FIRM map. The nearest aquatic feature is a man-made upland drainage ditch located on the southeast boundary of the wetland and connects to a second upland man-made drainage ditch. The wetland is surrounded by additional upland man-made ditches, none of which have a hydrologic surface connection to any water of the US and are not shown on a Topo map. All of the previously mentioned upland man-made ditches are located less than a 10th of a mile away from the wetland and have no hydrologic surface connection to any water of the United States (U.S.). A single leveed upland man-made drainage ditch, located north of the wetland and previously mentioned man-made drainage ditches, historically connected by a culvert to an upland man-made drainage ditch named P144-03-00. P144-03-00 connects to P100-00-00 (Greens Bayou). Site photos indicate this culvert has since been blocked by a plate of steel. This leveed upland man-made drainage ditch did not and currently does not have a hydrologic surface connection to the wetland. The nearest U.S. water is Greens Bayou located approximately 1.3 linear miles and has no hydrologic surface connection to the wetland. The closest TNW is Lake Houston located approximately 15 aerial miles which has no hydrologic surface connection to the wetland. The wetland is isolated. The wetland is not or could not be used by interstate or foreign travelers for recreation or other purposes, is not or would not be used for industrial purposes by industries in interstate commerce, and is not or could not be used to take fish or shellfish sold in interstate or foreign commerce. No other nexus to interstate or foreign commerce is known.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

	REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): June 5, 2008
B.	DISTRICT OFFICE, FILE NAME, AND NUMBER: CESWG, SWG-2008-0025; Wetland 2
C.	PROJECT LOCATION AND BACKGROUND INFORMATION:
	State: Texas County/parish/borough: Harris City: Houston
	Center coordinates of site (lat/long in degree decimal format): Lat. 29.9349° N, Long95.4228° W.
	Universal Transverse Mercator: ZONE 15 266137.26E 3314041.59N
	Name of nearest waterbody: Greens Bayou

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D.	RE	VIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
	\times	Office (Desk) Determination. Date: 23April2008
		Field Determination. Date(s):

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: NA

SECTION II: SUMMARY OF FINDINGS

SECTION IS BACKCROUND INFORMATION

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

Name of watershed or Hydrologic Unit Code (HUC): 12040104

There Are	no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the
	a. [Required]
	Waters subject to the ebb and flow of the tide.
16 Y	Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce
I	Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There Are no "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the	116

a.	Indica	ate presence of waters of U.S. in review area (check all that apply): 1
	Ali	TNWs, including territorial seas
	48	Wetlands adjacent to TNWs
		Relatively permanent waters ² (RPWs) that flow directly or indirectly into TNWs
	110	Non-RPWs that flow directly or indirectly into TNWs
		Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
	蓋	Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
	98	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
	25	Impoundments of jurisdictional waters
		Isolated (interstate or intrastate) waters, including isolated wetlands
b.	Ident	ify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: acres.

c. Limits (boundaries) of jurisdiction based on: Pick List

Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: A review and investigation of documents listed in Section IV of this form was conducted 23April2008. The 1995 and 2004 Infrared aerial photographs indicated cooler signatures which can be indicative of hydrology. Clients submitted data sheets confirmed wetlands containing the three criteria (hydrology, hydric soils, and hydrophytic vegetation) of a wetland as outlined in the 1987 Corps of Engineers Delineation Manual. NWI indicates that this area contains a wetland. The wetland and project area are outside of the 100-year floodplain as indicated by the FEMA

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

Supporting documentation is presented in Section III.F.

FIRM map. The nearest aquatic feature is a man-made upland drainage ditch located on the southern boundary of the wetland and connects to a second upland man-made drainage ditch that flows outside of the project area into an additional wetland outside of the project area. The wetland is surrounded by additional upland man-made ditches, none of which have a hydrologic surface connection to any water of the US and are not shown on a Topo map. All of the previously mentioned upland man-made ditches are located less than a 10th of a mile away from the wetland and have no hydrologic surface connection to any water of the United States (U.S.). A single leveed upland man-made drainage ditch, located north of the wetland and previously mentioned man-made drainage ditches, historically connected by a culvert to an upland man-made drainage ditch named P144-03-00. P144-03-00 connects to P100-00-00 (Greens Bayou). Site photos indicate this culvert has since been blocked by a plate of steel. This leveed upland manmade drainage ditch did not and currently does not have a hydrologic surface connection to the wetland. The nearest U.S. water is Greens Bayou located approximately 1.4 linear miles and has no hydrologic surface connection to the wetland. The closest TNW is Lake Houston located approximately 15 aerial miles which has no hydrologic surface connection to the wetland. The wetland is isolated. The wetland is not or could not be used by interstate or foreign travelers for recreation or other purposes, is not or would not be used for industrial purposes by industries in interstate commerce, and is not or could not be used to take fish or shellfish sold in interstate or foreign commerce. No other nexus to interstate or foreign commerce is known.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1.	TNW Identify TNW:
	Summarize rationale supporting determination: .
2.	Wetland adjacent to TNW Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(1)	Gene	eral Area Conditions:
	Wate	rshed size: Pick List
	Drain	nage area: Pick List
		age annual rainfall: inches
		age annual snowfall: inches
(ii)	Phys	ical Characteristics:
` .	(a)	Relationship with TNW:
	. , .	☐ Tributary flows directly into TNW.
		Tributary flows through Pick List tributaries before entering TNW.
		Project waters are Pick List river miles from TNW.
		Project waters are Pick List river miles from RPW.
		Project waters are Pick List aerial (straight) miles from TNW.
		Project waters are Pick List aerial (straight) miles from RPW.
		Project waters cross or serve as state boundaries. Explain: .
		Identify flow route to TNW ⁵ : .
		Tributary stream order, if known:
		• • • • • • • • • • • • • • • • • • • •

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

	(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
		Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
		Surface flow is: Pick List. Characteristics: .
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list):
		☐ Discontinuous OHWM. ⁷ Explain: .
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: oil or scum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics tidal gauges other (list): Mean High Water Mark indicated by: survey to available datum; physical markings; vegetation lines/changes in vegetation types.
(iii)	Cha	emical Characteristics: aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: ntify specific pollutants, if known:

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv)	Biological Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Chai	racteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
		Physical Characteristics: (a) General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b) General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
		Surface flow is: Pick List Characteristics:
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c) Wetland Adjacency Determination with Non-TNW: Directly abutting Not directly abutting Discrete wetland hydrologic connection. Explain: Ecological connection. Explain: Separated by berm/barrier. Explain:
		(d) Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
		Chemical Characteristics: Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Identify specific pollutants, if known:
	(iii)	Biological Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	racteristics of all wetlands adjacent to the tributary (if any) All wetland(s) being considered in the cumulative analysis: Pick List Approximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

ear-round are jurisdictional. Provide data and rationale indicating that
ear-round are jurisdictional. Provide data and rationale indicating that
ear-round are jurisdictional. Provide data and rationale indicating that
flow "seasonally" (e.g., typically three months each year) are ided at Section III.B. Provide rationale indicating that tributary flows

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary i seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	Impoundments of jurisdictional waters. As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
DE SU III III	CLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
Ide	entify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

		ide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.			
F.	×	N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):			
	facto judg	ide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR ors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional ment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres.			
		Other non-wetland waters: acres. List type of aquatic resource: Wetlands: 1.7 acres.			
	a fin	ride acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such ding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.			
	SECTION IV: DATA SOURCES.				
A. i	and	PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report.			
		☐ Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas: ☐ USGS NHD data.			
		USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000 scale Aldine, TX Quad. USDA Natural Resources Conservation Service Soil Survey. Citation: National wetlands inventory map(s). Cite name: State/Local wetland inventory map(s): FEMA/FIRM maps: 48201C0460L. 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: ☒ Aerial (Name & Date): 1995 & 2004 Infrared Aerial Photos. or ☒ Other (Name & Date): Clients site photos dated 28September08, & 17April08.			
		Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):			

B. ADDITIONAL COMMENTS TO SUPPORT JD: A review and investigation of documents listed in Section IV of this form was conducted 23April2008. The 1995 and 2004 Infrared aerial photographs indicated cooler signatures which can be indicative of hydrology. Clients submitted data sheets confirmed wetlands containing the three criteria (hydrology, hydric soils, and hydrophytic vegetation) of a wetland as outlined in the 1987 Corps of Engineers Delineation Manual. NWI indicates that this area contains a wetland. The wetland and

project area are outside of the 100-year floodplain as indicated by the FEMA FIRM map. The nearest aquatic feature is a man-made upland drainage ditch located on the southern boundary of the wetland and connects to a second upland man-made drainage ditch that flows outside of the project area into an additional wetland outside of the project area. The wetland is surrounded by additional upland man-made ditches, none of which have a hydrologic surface connection to any water of the US and are not shown on a Topo map. All of the previously mentioned upland man-made ditches are located less than a 10th of a mile away from the wetland and have no hydrologic surface connection to any water of the United States (U.S.). A single leveed upland man-made drainage ditch, located north of the wetland and previously mentioned man-made drainage ditches, historically connected by a culvert to an upland man-made drainage ditch named P144-03-00. P144-03-00 connects to P100-00-00 (Greens Bayou). Site photos indicate this culvert has since been blocked by a plate of steel. This leveed upland man-made drainage ditch did not and currently does not have a hydrologic surface connection to the wetland. The nearest U.S. water is Greens Bayou located approximately 1.4 linear miles and has no hydrologic surface connection to the wetland. The closest TNW is Lake Houston located approximately 15 aerial miles which has no hydrologic surface connection to the wetland. The wetland is isolated. The wetland is not or could not be used by interstate or foreign travelers for recreation or other purposes, is not or would not be used for industrial purposes by industries in interstate commerce, and is not or could not be used to take fish or shellfish sold in interstate or foreign commerce. No other nexus to interstate or foreign commerce is known.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SEC	CTION I: BACKGROUND INFORMATION
A.	REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): June 5, 2008
В.	DISTRICT OFFICE, FILE NAME, AND NUMBER: CESWG, SWG-2008-0025; Wetland 3
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Harris City: Houston Center coordinates of site (lat/long in degree decimal format): Lat. 29.9378° N, Long95.4188° W. Universal Transverse Mercator: ZONE 15 - 266527.74E 3314350.36N Name of nearest waterbody: Greens Bayou Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: NA
	Name of watershed or Hydrologic Unit Code (HUC): 12040104 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: 23April2008 Field Determination. Date(s):
	CTION II: SUMMARY OF FINDINGS BLASSECTION IN DETERMINATION OF HUBISDICTION
Α.	RHA SECTION 10 DETERMINATION OF JURISDICTION.
The revi	re Area o "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the liew area. [Required] Waters subject to the ebb and flow of the tide.
	Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
B.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	ere Are no "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	 Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): ¹ TNWs, including territorial seas
	Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
	 Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
	Impoundments of jurisdictional waters
	Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: acres.
	c. Limits (boundaries) of jurisdiction based on: Pick List

2. Non-regulated waters/wetlands (check if applicable):³

Elevation of established OHWM (if known):

A Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: A review and investigation of documents listed in Section IV of this form was conducted 23April2008. The 1995 and 2004 Infrared aerial photographs indicated cooler signatures which can be indicative of hydrology. Clients submitted data sheets confirmed wetlands containing the three criteria (hydrology, hydric soils, and hydrophytic vegetation) of a wetland as outlined in the 1987 Corps of Engineers Delineation Manual. NWI indicates that this area contains a Palustrine Scrub-shrub Flooded (PSSF) wetland. The wetland and project area are outside of the 100-year

Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

Supporting documentation is presented in Section III.F.

floodplain as indicated by the FEMA FIRM map. The nearest aquatic feature is a man-made upland drainage ditch located within the wetland and extending west. The wetland is surrounded by additional upland man-made ditches, none of which have a hydrologic surface connection to any water of the US and are not shown on a Topo map. All of the previously mentioned upland man-made ditches are located less than a 10th of a mile away from the wetland and have no hydrologic surface connection to any water of the United States (U.S.). A single leveed upland man-made drainage ditch, located south of the wetland and previously mentioned man-made drainage ditches, historically connected by a culvert to an upland man-made drainage ditch named P144-03-00. P144-03-00 connects to P100-00-00 (Greens Bayou). Site photos indicate this culvert has since been blocked by a plate of steel. This leveed upland man-made drainage ditch did not and currently does not have a hydrologic surface connection to the wetland. The nearest U.S. water is Greens Bayou located approximately 1.3 linear miles and has no hydrologic surface connection to the wetland. The wetland is isolated. The wetland is not or could not be used by interstate or foreign travelers for recreation or other purposes, is not or would not be used for industrial purposes by industries in interstate commerce, and is not or could not be used to take fish or shellfish sold in interstate or foreign commerce. No other nexus to interstate or foreign commerce is known.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1.	TNW Identify TNW:	
	Summarize rationale supporting determination: .	
2.	Wetland adjacent to TNW Summarize rationale supporting conclusion that wetland is "adjacent":	

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

General Area Conditions: Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches
Physical Characteristics:
(a) Relationship with TNW:
Tributary flows directly into TNW.
Tributary flows through Pick List tributaries before entering TNW.
Project waters are Pick List river miles from TNW.
Project waters are Pick List river miles from RPW.
Project waters are Pick List aerial (straight) miles from TNW.
Project waters are Pick List aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain:
Identify flow route to TNW ⁵ :
Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

	(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
		Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
		Surface flow is: Pick List. Characteristics: .
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation shelving the presence of wrack line sediment sorting sediment down, bent, or absent leaf litter disturbed or washed away sediment deposition multiple observed or predicted flow events water staining abrupt change in plant community Discontinuous OHWM. Explain:
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by:
(iii)	Cha	emical Characteristics: aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: . ntify specific pollutants, if known:

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv)		logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	ract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		Sical Characteristics: General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: Pick List Characteristics:
			Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: ntify specific pollutants, if known:
	(iii	Bio	Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Tish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Ch	All	teristics of all wetlands adjacent to the tributary (if any) wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:
	TNWs: linear feet width (ft), Or, acres.
	Wetlands adjacent to TNWs: acres.
2.	
	Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that
	tributary is perennial: .
	Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are
	jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows
	seasonally: .

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	Impoundments of jurisdictional waters. As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
DE SU III	DLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
Ide	ntify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

		ride estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
F.		N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	factoriudg	ride acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR ors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional ment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: Approximatly 0.1acres.
	a fin	vide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such ding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
SEC	TIO	NIV: DATA SOURCES.
A. S	and	PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report.
		Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas: USGS NHD data. USGS 8 and 12 digit HUC maps.
		U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000 scale Aldine, TX Quad. USDA Natural Resources Conservation Service Soil Survey. Citation: National wetlands inventory map(s). Cite name: State/Local wetland inventory map(s): FEMA/FIRM maps: 48201C0460L. 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: ☒ Aerial (Name & Date):1995 & 2004 Infrared Aerial Photos.
		or \(\sum \) Other (Name & Date): Clients site photos dated 28September08, & 17April08. Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: A review and investigation of documents listed in Section IV of this form was conducted 23April2008. The 1995 and 2004 Infrared aerial photographs indicated cooler signatures which can be indicative of hydrology. Clients submitted data sheets confirmed wetlands containing the three criteria (hydrology, hydric soils, and hydrophytic vegetation) of a wetland as outlined in the 1987 Corps of Engineers Delineation Manual. NWI indicates that this area contains a Palustrine Scrub-shrub

Flooded (PSSF) wetland. The wetland and project area are outside of the 100-year floodplain as indicated by the FEMA FIRM map. The nearest aquatic feature is a man-made upland drainage ditch located within the wetland and extending west. The wetland is surrounded by additional upland man-made ditches, none of which have a hydrologic surface connection to any water of the US and are not shown on a Topo map. All of the previously mentioned upland man-made ditches are located less than a 10th of a mile away from the wetland and have no hydrologic surface connection to any water of the United States (U.S.). A single leveed upland man-made drainage ditch, located south of the wetland and previously mentioned man-made drainage ditches, historically connected by a culvert to an upland man-made drainage ditch named P144-03-00. P144-03-00 connects to P100-00-00 (Greens Bayou). Site photos indicate this culvert has since been blocked by a plate of steel. This leveed upland man-made drainage ditch did not and currently does not have a hydrologic surface connection to the wetland. The nearest U.S. water is Greens Bayou located approximately 1.3 linear miles and has no hydrologic surface connection to the wetland. The closest TNW is Lake Houston located approximately 15 aerial miles which has no hydrologic surface connection to the wetland. The wetland is isolated. The wetland is not or could not be used by interstate or foreign travelers for recreation or other purposes, is not or would not be used for industrial purposes by industries in interstate commerce, and is not or could not be used to take fish or shellfish sold in interstate or foreign commerce. No other nexus to interstate or foreign commerce is known.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I:	BACKGROUND	INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 5/19/2008

В.	DISTRICT OFFICE, FILE NAME, AND NUMBER: CESWG-Total Petrochemical-SWG-2008-00492
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: 5/19/2008 Field Determination. Date(s):
SEC A.	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
The area	waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce Explain:
В. (CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	re Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
,	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: 631linear feet: width (ft) and/or acres. Wetlands: acres.
	 c. Limits (boundaries) of jurisdiction based on: Pick List Elevation of established OHWM (if known): 2. Non-regulated waters/wetlands (check if applicable):³
	Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional Explain:

Boxes checked below shall be supported by completing the appropriate sections in Section III below.
 For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
 Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: Neches River.

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

General Area Conditions: Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: Relationship with TNW: Tributary flows directly into TNW. Tributary flows through Pick List tributaries before entering TNW. Project waters are **Pick List** river miles from TNW. Project waters are Pick List river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain: Identify flow route to TNW5: Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

	(0)	Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
		Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
	,	Surface flow is: Pick List. Characteristics:
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wack line sediment sorting sediment sorting sediment deposition leaf litter disturbed or washed away sediment deposition water staining other (list): Discontinuous OHWM. ⁷ Explain:
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: oil or scum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics tidal gauges other (list): Mean High Water Mark indicated by: survey to available datum; physical markings; vegetation lines/changes in vegetation types.
(iii)	Cha	emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: .tify specific pollutants, if known:

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv)	Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:	
2.	Cha	acteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW	
	(i)	Physical Characteristics: (a) General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:	
		(b) General Flow Relationship with Non-TNW: Flow is: Pick List Characteristics:	
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:	
		(c) Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:	
		Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.	
	(ii)	Chemical Characteristics: Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershe characteristics; etc.). Explain: Identify specific pollutants, if known:	d
	(iii)	Biological Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:	
3.	Cha	acteristics of all wetlands adjacent to the tributary (if any) All wetland(s) being considered in the cumulative analysis: Pick List Approximately () acres in total are being considered in the cumulative analysis.	

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed;

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and
 other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:

	Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary i seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
	Demonstrate that water is isolated with a nexus to commerce (see É below).
SU III	DLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
	ntify water hady and summarize retionals supporting determinestor.

E.

⁸See Footnote # 3.

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

		ide estimates for jurisdictional waters in the review area (check all that apply): Fributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Vetlands: acres.
F.	Ш	In JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	factoriudge judg	ide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR rs (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional nent (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	a fin	de acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such ling is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
SEC	CTIO	NIV: DATA SOURCES.
A.	and	ORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked equested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report.
	X	☐ Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: Neches River. U.S. Geological Survey Hydrologic Atlas: ☐ USGS NHD data.
		☐ USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: . USDA Natural Resources Conservation Service Soil Survey. Citation: National wetlands inventory map(s). Cite name: State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: ☐ Aerial (Name & Date):
		or ☐ Other (Name & Date): Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD:

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

- REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 5/15/2008
- DISTRICT OFFICE, FILE NAME, AND NUMBER: CESWG-Chevron Corporation-SWG-2008-00500

C.	PROJECT LOCATION AND BACKGROUND INFORMATION:
	State: Texas County/parish/borough: Jefferson City: Beaumont
	Center coordinates of site (lat/long in degree decimal format): Lat. 30.00834° N. Long. 93.975268° N.
	Universal Transverse Mercator: Zone 405943E 3320109N
	Name of nearest waterbody: Neches River
	Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Neches River
	Name of watershed or Hydrologic Unit Code (HUC): 12020003 (Lower Neches, Texas)
	Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
	Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on
	different JD form.
	BELITEN BERYODATER FOR CITE THAT WAS AND COMPON AND THE PROPERTY.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
	Office (Desk) Determination Date: 5/15/2008

SECTION II: SUMMARY OF FINDINGS

Field Determination. Date(s):

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There Are "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1.	W	aters	of	the	U.S.

Wetlands:

Waters of the Cibi								
a.	Indica	Indicate presence of waters of U.S. in review area (check all that apply): 1						
	\boxtimes	TNWs, including territorial seas						
		Wetlands adjacent to TNWs						
		Relatively permanent waters ² (RPWs) that flow directly or indirectly into TNWs						
		Non-RPWs that flow directly or indirectly into TNWs						
		Wetlands directly abutting RPWs that flow directly or indirectly into TNWs						
		Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs						
		Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs						
		Impoundments of jurisdictional waters						
		Isolated (interstate or intrastate) waters, including isolated wetlands						

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: 1160linear feet:

width (ft) and/or

acres.

c. Limits (boundaries) of jurisdiction based on: Pick List

Elevation of established OHWM (if known):

Non-regulated waters/wetlands (check if applicable):³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

Boxes checked below shall be supported by completing the appropriate sections in Section III below.

Supporting documentation is presented in Section III.F.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: Neches River.

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

General Area Conditions: Watershed size: Pick List Drainage area: Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: Relationship with TNW: Tributary flows directly into TNW. ☐ Tributary flows through **Pick List** tributaries before entering TNW. Project waters are **Pick List** river miles from TNW. Project waters are Pick List river miles from RPW. Project waters are **Pick List** aerial (straight) miles from TNW. Project waters are Pick-List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain: Identify flow route to TNW5: Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b)	Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
	Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
	Surface flow is: Pick List. Characteristics: .
	Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation shelving the presence of wrack line sediment sorting sediment deposition multiple observed or predicted flow events water staining abrupt change in plant community other (list):
	☐ Discontinuous OHWM. ⁷ Explain:
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: oil or scum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics tidal gauges other (list): Mean High Water Mark indicated by: survey to available datum; physical markings; wegetation lines/changes in vegetation types.
Cha	emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: tify specific pollutants, if known:

(iii)

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

Tibid.

(iv)]	Biological Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2. Char	acteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	Physical Characteristics: (a) General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
•	(b) General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
	Surface flow is: Pick List Characteristics: .
	Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	(c) Wetland Adjacency Determination with Non-TNW: Directly abutting Not directly abutting Discrete wetland hydrologic connection. Explain: Ecological connection. Explain: Separated by berm/barrier. Explain:
	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	Chemical Characteristics: Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Identify specific pollutants, if known:
(iii) I 	Biological Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
1	acteristics of all wetlands adjacent to the tributary (if any) All wetland(s) being considered in the cumulative analysis: Pick List Approximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and
 other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: TNWs: 1160linear feet width (ft), Or, acres. Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flow seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
DE SU	DLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
Ιđe	ontify water hady and summarize rationale supporting determination.

E.

⁸See Footnote # 3.

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

		vide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
F.		N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	factoriudg	vide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR ors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional ment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	a fin	ride acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such iding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	SUPI	PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: Neches River Neches River. U.S. Geological Survey Hydrologic Atlas:
		USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: Terry Texas. USDA Natural Resources Conservation Service Soil Survey. Citation: National wetlands inventory map(s). Cite name: State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: ☐ Aerial (Name & Date): or ☐ Other (Name & Date): Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD:

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SEC A.	CTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 27 May 2008				
B.	DISTRICT OFFICE, FILE NAME, AND NUMBER: CESWG, SWG-2008-00448				
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: San Patricio City: Sinton Center coordinates of site (lat/long in degree decimal format): Lat. 28.08376° N, Long97.33292° W. Universal Transverse Mercator: 14; 663650, 3107250 Name of nearest waterbody: wetlands adjacent to Chiltipin Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Copano Bay Name of watershed or Hydrologic Unit Code (HUC): 12100407 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.				
	Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.				
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ☐ Office (Desk) Determination. Date: 27 May 2008 ☐ Field Determination. Date(s): 14 May 2008				
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.				
The	Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the iew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce Explain:				
В.	CWA SECTION 404 DETERMINATION OF JURISDICTION.				
The	ere Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]				
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands				
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: 62.4 acres.				

Elevation of established OHWM (if known):

Non-regulated waters/wetlands (check if applicable):³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

c. Limits (boundaries) of jurisdiction based on: Established by OHWM.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

-	FRID TEX	y
Ι.	TNW	

Identify TNW:

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: Pick List
Drainage area: Pick List
Average approach reinfall:

Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through Pick List tributaries before entering TNW.

Project waters are Pick List river miles from TNW.

Project waters are Pick List river miles from RPW.

Project waters are Pick List aerial (straight) miles from TNW.

Project waters are Pick List aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW⁵:

Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

	(b)	General Tributary Characteristics (check all that apply	<u>y):</u>	
		Tributary is: Natural		
		Artificial (man-made). Explai		
		☐ Manipulated (man-altered). E	Expla	in: .
		Tributary properties with respect to top of bank (esting Average width: Average depth: feet feet	mate):
		Average side slopes: Pick List.		
		Primary tributary substrate composition (check all tha	ıt ann	lv)·
		Silts Sands	ii upp	Concrete
		☐ Cobbles ☐ Gravel		Muck
		☐ Bedrock ☐ Vegetation. Type/%	o cov	er:
		Other. Explain:		
		Tributary condition/stability [e.g., highly eroding, slow	ughir	ng banksl. Explain:
		Presence of run/riffle/pool complexes. Explain:		
		Tributary geometry: Pick List	200	
		Tributary gradient (approximate average slope):	%	
	(c)	Flow:		
	. ,	Tributary provides for: Pick List		
		Estimate average number of flow events in review are	a/yea	r: Pick List
		Describe flow regime: Other information on duration and volume:		
		other information on duration and volume.		
		Surface flow is: Pick List. Characteristics:		
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:		
		Tributary has (check all that apply):		
		Bed and banks		
		OHWM ⁶ (check all indicators that apply):		4
		clear, natural line impressed on the bank changes in the character of soil	H	the presence of litter and debris destruction of terrestrial vegetation
		shelving	H	the presence of wrack line
		vegetation matted down, bent, or absent	\Box	sediment sorting
		 leaf litter disturbed or washed away 		scour
		sediment deposition		multiple observed or predicted flow events
		water staining		abrupt change in plant community
		☐ other (list): ☐ Discontinuous OHWM. ⁷ Explain:		
		Discontinuous OH w.M. Explain:	٠	
		If factors other than the OHWM were used to determine	ne la	teral extent of CWA jurisdiction (check all that apply):
		High Tide Line indicated by:		n High Water Mark indicated by:
		oil or scum line along shore objects		survey to available datum;
		fine shell or debris deposits (foreshore) physical markings/characteristics		physical markings; vegetation lines/changes in vegetation types.
		tidal gauges other (list):		regetation integrenation types.
(111)	CL	micel Chementonistics		
(111)		mical Characteristics: racterize tributary (e.g., water color is clear, discolored	, oilv	film; water quality; general watershed characteristics, etc.)
	- mu	Explain: .	, 011	, quality, golden materialed enalacteristics, etc.)
	Iden	atify specific pollutants, if known:		

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv)		ogical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	racto	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		sical Characteristics:
	(-)		General Wetland Characteristics:
			Properties: Wetland size: acres
			Wetland size: acres Wetland type. Explain: .
			Wetland quality. Explain:
			Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: Pick List Characteristics:
			Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: Directly abutting Not directly abutting Discrete wetland hydrologic connection. Explain: Ecological connection. Explain: Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: ntify specific pollutants, if known:
	(iii	Bio	Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Ch	All	teristics of all wetlands adjacent to the tributary (if any) wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: TNWs: linear feet 1 width (ft), Or, acres. Wetlands adjacent to TNWs: acres.			
2.	 RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: 			

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: Creek is shown as an RPW on USGS topographical map. Directly abutting wetland as shown by proximity to Chiltipin Creek per topographical maps, FEMA maps, and aerial photography. Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly
	abutting an RPW: Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	Impoundments of jurisdictional waters. As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
DE	OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, EGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY ICH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:

E.

⁸See Footnote # 3.

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

Identify water body and summarize rationale supporting determination: Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters:

Other non-wetland linear feet width (ft). Other non-wetland waters: Identify type(s) of waters: Wetlands: acres. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):

Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

Non-wetland waters (i.e., rive	rs, streams):	linear feet	width (ft).
Lakes/ponds: acres.			
Other non-wetland waters:	acres. List t	ype of aquatic re	source:
Wetlands: acres.		i i	

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

a fin	ding is required for jurisdiction	n (check a	ll that apply):	
	Non-wetland waters (i.e., rive	ers, stream	s): linear feet,	width (ft).
	Lakes/ponds: acres.			
	Other non-wetland waters:	acres.	List type of aquatic re-	source:
	Wetlands: acres.			

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

\bowtie	Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
	Data sheets prepared/submitted by or on behalf of the applicant/consultant.
	Office concurs with data sheets/delineation report.
	Office does not concur with data sheets/delineation report.
	Data sheets prepared by the Corps:
	Corps navigable waters' study:
	U.S. Geological Survey Hydrologic Atlas: .
	USGS NHD data.
	USGS 8 and 12 digit HUC maps.
\boxtimes	U.S. Geological Survey map(s). Cite scale & quad name: 1:24000; Rincon Bend, Texas.
	USDA Natural Resources Conservation Service Soil Survey. Citation:
	National wetlands inventory map(s). Cite name:
	State/Local wetland inventory map(s):
\boxtimes	FEMA/FIRM maps:4855060255C, 18 March 1985.
	100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
\boxtimes	Photographs: Aerial (Name & Date): USGS, 2004; NAVTEQ, 2007.
	or Other (Name & Date): Site photos, 14 May 2008.
	Previous determination(s). File no. and date of response letter:

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Applicable/supporting scientific literature: Other information (please specify): . .

Applicable/supporting case law:

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

A.	REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 5 June 2008
B.	DISTRICT OFFICE, FILE NAME, AND NUMBER: CESWG-PE-RCC, River Bend Resorts, SWG-2008-00250
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron City: Brownsville Center coordinates of site (lat/long in degree decimal format): Lat. 25.9505° N, Long. 97.5737° E. Universal Transverse Mercator: UTM 14: 2870976N/642812E Name of nearest waterbody: Rio Grande Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Rio Grande Name of watershed or Hydrologic Unit Code (HUC): 13090002 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: 5 June 2008 Field Determination. Date(s):
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	re Are "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce Explain:
В. (CWA SECTION 404 DETERMINATION OF JURISDICTION.
Γhe	re Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: acres.
	c. Limits (boundaries) of jurisdiction based on: Established by OHWM. Elevation of established OHWM (if known):
	2. Non-regulated waters/wetlands (check if applicable): Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional Explain:

SECTION I: BACKGROUND INFORMATION

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.
² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

TNW 1.

Identify TNW: Rio Grande.

Summarize rationale supporting determination: International boundary, historical interstate commerce.

Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody4 is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

Characteristics of non-TNWs that flow directly or indirectly into TNW

General Area Conditions:

Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.
☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are Pick List river miles from TNW. Project waters are Pick List river miles from RPW.

Project waters are Pick List aerial (straight) miles from TNW.

Project waters are Pick List aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW⁵:

Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid

Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b) General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:	
Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.	
Primary tributary substrate composition (check all that apply): Silts Sands Cobbles Gravel Bedrock Vegetation. Type/% cover: Other. Explain:	☐ Concrete ☐ Muck
Tributary condition/stability [e.g., highly eroding, sloughing bar Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope):	nks]. Explain: .
(c) Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pic Describe flow regime: Other information on duration and volume:	ck List
Surface flow is: Pick List. Characteristics: .	
Subsurface flow: Pick List . Explain findings: Dye (or other) test performed:	
changes in the character of soil dest shelving the property of	presence of litter and debris ruction of terrestrial vegetation presence of wrack line ment sorting ir tiple observed or predicted flow events pt change in plant community
☐ Discontinuous OHWM. ⁷ Explain: . If factors other than the OHWM were used to determine lateral of the continuous of	extent of CWA jurisdiction (check all that apply)
High Tide Line indicated by: oil or scum line along shore objects fine shell or debris deposits (foreshore)	gh Water Mark indicated by: y to available datum; cal markings; ation lines/changes in vegetation types.
Chemical Characteristics: Characterize tributary (e.g., water color is clear, discolored, oily film: Explain: Identify specific pollutants, if known:	water quality; general watershed characteristics, etc.)

(iii)

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv)		ogical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	racte	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		sical Characteristics: General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain: Surface flow is: Pick List Characteristics: Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: Directly abutting Not directly abutting Discrete wetland hydrologic connection. Explain: Ecological connection. Explain: Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: httify specific pollutants, if known:
	(iii)		logical Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	eristics of all wetlands adjacent to the tributary (if any) wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: TNWs: 500 linear feet150 width (ft), Or, acres. Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	■ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SU SU SU	DLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
Ide	ntify water body and summarize rationale supporting determination:

8See Footnote # 3.

E.

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	ovide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . Wetlands: acres.	
F.	DN-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):	
	ovide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR stors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional digment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.	1
	ovide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such inding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.	:h
SEC	ON IV: DATA SOURCES.	
A. 5	PPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps:	1
	Corps navigable waters' study:Galveston District List of Navigable Water of the U.S U.S. Geological Survey Hydrologic Atlas: USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name:West Brownsville, TX 1:24000. USDA Natural Resources Conservation Service Soil Survey. Citation: National wetlands inventory map(s). Cite name: State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)	
	Photographs: ☐ Aerial (Name & Date):TNRIS 2004. or ☐ Other (Name & Date):	
	Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):	

B. ADDITIONAL COMMENTS TO SUPPORT JD:

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

A.	REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 5 June 2008
B.	DISTRICT OFFICE, FILE NAME, AND NUMBER: CESWG-PE-RCC, City of Port Aransas, SWG-2008-00469
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Nueces City: Port Aransas Center coordinates of site (lat/long in degree decimal format): Lat. 27.8387° N, Long. 97.0608° E. Universal Transverse Mercator: UTM 14: 3080646N/691000E Name of nearest waterbody: Corpus Christi Channel/Port Aransas Municipal Harbor Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Corpus Christi Bay Name of watershed or Hydrologic Unit Code (HUC): 12110202 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: 5 June 2008 Field Determination. Date(s):
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
The	re Are "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review a. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
В.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	re Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters ² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: acres.
	c. Limits (boundaries) of jurisdiction based on: Established by mean (average) high waters. Elevation of established OHWM (if known):
	 Non-regulated waters/wetlands (check if applicable):³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

SECTION I: BACKGROUND INFORMATION

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.
² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: Corpus Christi Bay.

Summarize rationale supporting determination: Subject to ebb and flow of the tide; Port Aransas Municpal Harbor possess recreational/commercial vessels that navigate to Corpus Christi Bay and the Gulf of Mexico.

Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

General Area Conditions: Pick List Watershed size: Drainage area: Pick List

Average annual rainfall:

inches Average annual snowfall: inches

(ii) Physical Characteristics:

Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through Pick List tributaries before entering TNW.

Project waters are Pick List river miles from TNW.

Project waters are Pick List river miles from RPW.

Project waters are Pick List aerial (straight) miles from TNW.

Project waters are Pick List aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW5:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid

Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

	Tributary stream order, if known:
(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
	Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
	Surface flow is: Pick List. Characteristics: .
	Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list): Discontinuous OHWM. Explain:
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: oil or scum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics tidal gauges other (list): Mean High Water Mark indicated by: survey to available datum; physical markings; vegetation lines/changes in vegetation types.
Chai	mical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: tify specific pollutants, if known:

(iii)

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

Tlbid.

	(iv)	Biol	logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics:
			Habitat for: Federally Listed species. Explain findings:
			Fish/spawn areas. Explain findings:
			☐ Other environmentally-sensitive species. Explain findings: ☐ Aquatic/wildlife diversity. Explain findings:
			Aquatic/wilding diversity. Explain initings.
2.	Cha	ract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		vsical Characteristics:
		(a)	General Wetland Characteristics: Properties:
			Wetland size: acres
			Wetland type. Explain:
			Wetland quality. Explain: .
			Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW:
		(0)	Flow is: Pick List. Explain:
			Surface flow is: Pick List
			Characteristics: .
			Subsurface flow: Pick List. Explain findings: .
			Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW:
			Directly abutting
			Not directly abutting
			☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain:
			Separated by berm/barrier. Explain:
			_ Sopulated by certain current. Exp. ann.
		(d)	Proximity (Relationship) to TNW
			Project wetlands are Pick List river miles from TNW.
			Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List.
			Estimate approximate location of wetland as within the Pick List floodplain.
	(**)	CI.	
	(11)	Cha	emical Characteristics: aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed
		One	characteristics; etc.). Explain:
		Ide	ntify specific pollutants, if known:
	(iii) Rio	ological Characteristics. Wetland supports (check all that apply):
	(111		Riparian buffer. Characteristics (type, average width):
		Ħ	Vegetation type/percent cover. Explain: .
			Habitat for:
			Federally Listed species. Explain findings:
			Fish/spawn areas. Explain findings:
			Other environmentally-sensitive species. Explain findings:
			Aquatic/wildlife diversity. Explain findings:
3.	Cha		teristics of all wetlands adjacent to the tributary (if any)
			wetland(s) being considered in the cumulative analysis: Pick List
		App	proximately () acres in total are being considered in the cumulative analysis.

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: TNWs: 500 linear feet150 width (ft), Or, acres. Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SU	CLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
Ide	entify water body and summarize rationale supporting determination:

E.

⁸See Footnote # 3.

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

10 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . Wetlands: acres.
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
SEC	CTION IV: DATA SOURCES.
A. 5	SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report.
	Data sheets prepared by the Corps: Corps navigable waters' study:Galveston District List of Navigable Water of the U.S U.S. Geological Survey Hydrologic Atlas: USGS NHD data. USGS 8 and 12 digit HUC maps.
	U.S. Geological Survey map(s). Cite scale & quad name:Port Aransas, TX 1:24000. USDA Natural Resources Conservation Service Soil Survey. Citation: National wetlands inventory map(s). Cite name: State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date): TNRIS 2004. or □ Other (Name & Date):
	Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD:

The state of the s

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

	of the should be completed by following the modulations provided in section 1.4 of the 3D 1 of in instructional outdebook.
	CTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 5 June 2008
B.	DISTRICT OFFICE, FILE NAME, AND NUMBER: CESWG-PE-RCC, D. Norrell, SWG-1997-02938
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Aransas City: Rockport Center coordinates of site (lat/long in degree decimal format): Lat. 28.0475° N, Long. 97.0332° E. Universal Transverse Mercator: UTM14: 3104023N, 693318E Name of nearest waterbody: Little Bay Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Little Bay/Aransas Bay Name of watershed or Hydrologic Unit Code (HUC): 12100405 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a
	different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: 5 June 2008 Field Determination. Date(s): 8 December 2005
SEC A.	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	re Are "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review a. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce Explain:
В.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	ere Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: linear feet: acres.

width (ft) and/or

acres.

Wetlands:

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known):

Non-regulated waters/wetlands (check if applicable):³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: Little Bay & Aransas Bay.

Summarize rationale supporting determination: Subject to ebb and flow of the tide.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": Fringe wetlands contiguous with Little Bay along shoreline.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions: Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: (a) Relationship with TNW: ☐ Tributary flows directly into TNW. Tributary flows through **Pick List** tributaries before entering TNW. Project waters are Pick List river miles from TNW. Project waters are Pick List river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain: Identify flow route to TNW5: Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

	(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
		Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
		Surface flow is: Pick List. Characteristics: .
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list): Discontinuous OHWM. Explain:
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: oil or scum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics tidal gauges other (list): Mean High Water Mark indicated by: survey to available datum; physical markings; vegetation lines/changes in vegetation types.
(iii)	Cha	mical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: .tify specific pollutants, if known:

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv)		Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	ract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		Sical Characteristics: General Wetland Characteristics:
			Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: Pick List Characteristics: .
			Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: ntify specific pollutants, if known:
	(iii)	Bio	Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	veristics of all wetlands adjacent to the tributary (if any) wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: ☐ TNWs: linear feet width (ft), Or, 1.12acres. ☐ Wetlands adjacent to TNWs: 0.03 acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	Impoundments of jurisdictional waters. As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SUC	OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
Ide	ntify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: . Wetlands: acres.
SEC	CTION IV: DATA SOURCES.
A. 5	SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study:1977 Galveston District list of Navigable Wtaers of the U.S U.S. Geological Survey Hydrologic Atlas: USGS NHD data. USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name:Rockport, TX 1:24,000. USDA Natural Resources Conservation Service Soil Survey. Citation: National wetlands inventory map(s). Cite name:Rockport, TX. State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date):TNRIS, 2004.
	 Photographs: ☐ Aerial (Name & Date): TNRIS, 2004. or ☐ Other (Name & Date): Previous determination(s). File no. and date of response letter:D-3187 10 Oct. 1991; D-8921 11/25/97. Applicable/supporting case law:

B. ADDITIONAL COMMENTS TO SUPPORT JD: Projects has proposed navigation component.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SEC A.	CTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 6 June 2008
B.	DISTRICT OFFICE, FILE NAME, AND NUMBER: CESWG-PE-RCC, Equistar Chemicals LP, SWG-2008-00609
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: CCSC Inner Harbor State: Texas County/parish/borough: Nueces City: Corpus Christi Center coordinates of site (lat/long in degree decimal format): Lat. 27.8395° N, Long. 97.5117° E. Universal Transverse Mercator: UTM 14; 3080315N/646559E Name of nearest waterbody: Corpus Christi Bay Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Corpus Christi Bay Name of watershed or Hydrologic Unit Code (HUC): 12110202 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: 5 June 2008 Field Determination. Date(s):
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	re Are "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain: Corpus Christi Ship Channel; Federal deep water channel.
В. (CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	re Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: acres.
	c. Limits (boundaries) of jurisdiction based on: Established by mean (average) high waters. Elevation of established OHWM (if known):
	 Non-regulated waters/wetlands (check if applicable):³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional Explain:

Boxes checked below shall be supported by completing the appropriate sections in Section III below.
 For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
 Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: Corpus Christi Ship Channel and Corpus Christi Bay.

Summarize rationale supporting determination: Interstate commerce, ebb & flow of tide, Navigability study.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

General Area Conditions: Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: Relationship with TNW: Tributary flows directly into TNW. Tributary flows through Pick List tributaries before entering TNW. Project waters are Pick List river miles from TNW. Project waters are Pick List river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain: Identify flow route to TNW5: Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

	(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
		Primary tributary substrate composition (check all that apply): Silts Sands Concrete Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
		Surface flow is: Pick List. Characteristics:
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list): Discontinuous OHWM. ⁷ Explain:
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by:
(iii)	Cha	emical Characteristics: aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: httify specific pollutants, if known:

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv)	Bio	Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	aract	teristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		Sical Characteristics: General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: Pick List Characteristics:
			Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: uracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: ntify specific pollutants, if known:
	(iii)		logical Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	wetland(s) being considered in the cumulative analysis: Pick List broximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: TNWs: linear feet width (ft), Or, 4.5 acres. Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3. Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
 Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjace and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent as with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
Provide estimates for jurisdictional wetlands in the review area: acres.
7. Impoundments of jurisdictional waters. As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
Identify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 10 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	ovide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.	
F.	ON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):	e
	ovide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR tors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professions gment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.	al
	wide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where sunding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.	ch
SEC	ON IV: DATA SOURCES.	
A. 5	PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checker requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: Galveston District list of navigable waters. U.S. Geological Survey Hydrologic Atlas: USGS NHD data. USGS 8 and 12 digit HUC maps.	d
	U.S. Geological Survey map(s). Cite scale & quad name:Annaville, Tex. 1:24,000. USDA Natural Resources Conservation Service Soil Survey. Citation: National wetlands inventory map(s). Cite name:Corpus Christi, Tex. 1:24,000. State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date):2004, TNRIS.	
	or Other (Name & Date): Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):	

B. ADDITIONAL COMMENTS TO SUPPORT JD: These project areas abut the federal navigation channel and project is specifically to improve navigation.